

## **REMARKS**

In view of the above amendments and the following remarks, reconsideration and further examination are respectfully requested.

### **I. Amendments to the Claims**

Claims 56 and 57 have been amended to overcome the 35 U.S.C. § 101 rejection identified below.

### **II. 35 U.S.C. § 112, First Paragraph Rejections**

Claims 43-58 were rejected under 35 U.S.C. § 112, first paragraph for reciting subject matter not described in the specification. Specifically, the rejection alleges that the claimed “existence confirmation unit” for confirming a status of a media key on a medium, is not described in the specification. This rejection is respectfully traversed for the following reasons.

Initially, please note that claims 43-58 do not recite an existence confirmation unit for confirming a status of a media key, as alleged by the rejection. Rather, claim 43 (and the corresponding independent claims) recites “an existence confirmation unit operable to confirm whether or not the piece of media key data exists on the recording medium.” Therefore, it is submitted that this rejection is incorrect. For this reason alone, Applicants respectfully request withdrawal of this 35 U.S.C. § 112, first paragraph rejection.

However, in order to identify portions of the specification that provide support for the “existence confirmation unit,” as claimed, kindly consider the following comments.

Section 2.4 of the specification discloses that “*The comparing unit 1108 checks if a key revocation data file exists on the recording medium 1300 via the drive unit 1110 according to the instruction of the controlling unit 1109. The comparing unit further receives existence information indicating whether key revocation data file exists or not, from the drive unit 1110*” (see page 101 of the specification). Further, the specification discloses that “*The controlling unit 1109 instructs the comparing unit 1108 to check if one or more key revocation files exist on the recording medium 1300 or not*” (see page 103 of the specification). In addition, the specification states that “*The key revocation data RDATA is the same as the media key data MDATA in the first embodiment*” (see page 96 of the specification).

In view of the above, it is clear that the operation/structure of the “existence confirmation unit” is in fact described in the specification. Specifically, the operation of the “existence confirmation unit” is performed by the comparing unit 1108, as described above. In other words, because the specification clearly teaches that a unit checks to see if a revocation file exists on a recording medium, wherein the revocation data is the same as media key data, it is submitted that the limitations of the claimed “existence confirmation unit” as recited in claim 43, are clearly supported by the specification. For the same reasons, the limitations of claims 44-58 are also supported by the specification.

Therefore, withdrawal of this 35 U.S.C. § 112, first paragraph rejection is respectfully requested.

### **III. 35 U.S.C. § 112, Second Paragraph Rejections**

Claims 43-58 were rejected under 35 U.S.C. § 112, second paragraph for being indefinite for reciting “existence confirmation unit” which is allegedly a relative term. Specifically, the rejection stated that “existence confirmation unit” is a relative term and the specification does not provide a standard for ascertaining the requisite degree.

Initially, as mentioned above in Section II, please note that the Examiner’s statement “for ascertaining the requisite degree,” since claims 43-58 do not recite “ascertaining a degree.” As a result, Applicants do not know how to overcome the Examiner’s position. Therefore, for this reason alone, withdrawal of this rejection is respectfully requested.

Further, please note that, as discussed above, the operation of the “existence confirmation unit” is sufficiently defined in the specification. As a result, withdrawal of this 35 U.S.C. § 112, second paragraph rejection is respectfully requested.

### **IV. 35 U.S.C. § 101 Rejections**

Claims 56 and 57 were rejected under 35 U.S.C. § 101 for being directed to computer program products (i.e., a computer-readable recording). Claims 56 and 57 have been amended to recite “a computer-readable storage medium,” which is patentable subject matter.

As a result, because claims 56 and 57 have been amended to recite patentable subject matter, it is submitted that this 35 U.S.C. § 101 rejection is inapplicable to claims 56 and 57.

## **V. 35 U.S.C. § 103(a) Rejections**

Claims 43-45, 51, 52 and 55-58 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ansell et al. (U.S. 6,367,019) and Moribe et al. (U.S. 5,886,979). Further, dependent claims 46-50, 53 and 54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Ansell, Moribe, and Lotspiech (U.S. 6,609,116). These rejections are believed clearly inapplicable to claims 43-58 for the following reasons.

Independent claim 43 recites a recording apparatus for recording encrypted content onto a recording medium. Further, claim 43 recites an existence confirmation unit that confirms whether or not a piece of media key data exists on a recording medium, and a writing unit that, when the existence confirmation unit confirms that the piece of media key data does not exist on the recording medium, writes the encrypted content, the encrypted content key, and the piece of media key data stored in the storage unit into the rewritable area of the recording medium.

As a result, the structure required by claim 43 provides a feature such that, even when the recording medium does not contain the media key data, it is possible to provide protection of the content recorded to the recording medium by recording the piece of media key data stored in the storage unit to the rewritable area of the recording medium.

Ansell and Moribe, or any combination thereof, fail to disclose or suggest the above-mentioned distinguishing features, as well as the result of the structure required by the distinguishing features, as required by claim 43.

Initially, please note that the above-described 35 U.S.C. § 103(a) rejection acknowledges that Ansell fails to disclose or suggest the above-mentioned distinguishing features. In light of

the above the 35 U.S.C. § 103(a) rejection relies on Moribe for teaching limitations which are admittedly lacking from Ansell.

However, Moribe teaches a system that prevents illegal copying by recording a pattern (indicating identification information) in a manner that the pattern cannot be deleted (in other words, cannot be rewritten) (see col. 1, lines 54-65 and col. 11, lines 34-55), which fails to disclose or suggest an existence confirmation unit that confirms whether or not a piece of media key data exists on a recording medium, and a writing unit that, when the existence confirmation unit confirms that the piece of media key data does not exist on the recording medium, writes the encrypted content, the encrypted content key, and the piece of media key data stored in the storage unit into the rewritable area of the recording medium, as required by claim 43.

In other words, Moribe describes that the pattern cannot be deleted/rewritten, and thus fails to disclose or suggest that the media key data is stored into a rewritable area when the media key data is not found on the recording medium, as required by claim 43.

Furthermore, it is noted that Moribe teaches that the purpose of the invention of Moribe is to prevent illegal copying, which is achieved by recording the pattern into an undeletable (un-rewritable) area. Whereas, claim 43 requires that the media key data is stored in a rewritable area when the media key data is not found on the recording medium.

Therefore, because of the above-mentioned distinctions it is believed clear that claim 43 and claims 44-54 that depend therefrom would not have been obvious or result from any combination of Ansell and Moribe.

Regarding dependent claims 46-50, 53 and 54, which were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ansell and Moribe in view of Lotspiech, it is respectfully

submitted that Lotspiech does not disclose or suggest the above-discussed features of independent claim 43 which are lacking from the Ansell and Moribe references. Therefore, no obvious combination of Ansell and Moribe with Lotspiech would result in, or otherwise render obvious, the invention recited independent claim 43 and claims 46-50, 53 and 54 that depend therefrom.

Furthermore, there is no disclosure or suggestion in Ansell, Moribe and/or Lotspiech or elsewhere in the prior art of record which would have caused a person of ordinary skill in the art to modify Ansell, Moribe and/or Lotspiech to obtain the invention of independent claim 43. Accordingly, it is respectfully submitted that independent claim 43 and claims 44-54 that depend therefrom are clearly allowable over the prior art of record.

Amended independent claims 55, 56, 57 and 58 are directed to a method, a program, a storage medium and a system, respectively and each recite features that correspond to the above-mentioned distinguishing features of independent claim 43. Thus, for the same reasons discussed above, it is respectfully submitted that independent claims 55, 56, 57 and 58 are allowable over any combination of Ansell, Moribe and/or Lotspiech.

## **VI. Conclusion**

In view of the above amendments and remarks, it is submitted that the present application is now in condition for allowance and an early notification thereof is earnestly requested. The Examiner is invited to contact the undersigned by telephone to resolve any remaining issues.

Respectfully submitted,

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